

COMPANIES WEST GROUP

IBLA 97-13

Decided November 17, 1997

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring 38 mining claims abandoned and void for failure to pay the annual maintenance fees required by statute. AMC 223814-AMC 223851.

Affirmed as modified.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

Responsibility for satisfying the maintenance fee requirement of the Omnibus Budget Reconciliation Act of 1993, 30 U.S.C. § 28f (1994), resides with the owner of unpatented mining claims, as Congress has mandated that failure to make the annual payment of the claim fee required by the Act conclusively constitutes forfeiture of the unpatented mining claims. In the absence of a small miner exemption from the maintenance fee requirement, available only to holders of 10 or fewer mining claims, mill sites, or tunnel sites, failure to pay the fee in accordance with the Act and regulations results in a conclusive presumption of forfeiture.

2. Evidence: Presumptions--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

The presumption of regularity that BLM officials have properly discharged their duties and have not lost or misplaced legally significant documents filed with them is not rebutted without probative evidence of receipt.

APPEARANCES: George W. Cole, President, for Companies West Group, Denver, Colorado; Richard R. Greenfield, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

## OPINION BY ADMINISTRATIVE JUDGE TERRY

George W. Cole, President, Companies West Group (CWG) (collectively Cole or Appellant), has appealed from a Decision of the Arizona State Office, Bureau of Land Management (BLM), dated September 10, 1996, declaring 38 mining claims abandoned and void for failure to pay annual maintenance fees for the claims. The Decision stated that the mining claimant had timely filed a Maintenance Fee Payment Waiver Certification Form 3830-2 for assessment year 1997. Because BLM records showed CWG was the owner of the Deco No. 101 through 138, BLM serial numbers AMC 223814-AMC 223851, BLM concluded that CWG, as owner of 38 claims, did not qualify for the small miner exemption from payment of maintenance fees, available to owners of 10 or fewer claims, required by the Omnibus Budget Reconciliation Act of 1993 (Act), 30 U.S.C. § 28f (1994); see 43 C.F.R. § 3833.1-6; 43 C.F.R. § 3833.1-7.

Cole filed a Statement of Reasons (SOR) on CWG letterhead and signed it with the notation "for claimants." The SOR asserts that CWG transferred ownership of the claims to four listed companies, 1/ each of which received 10 or fewer claims. The SOR states that these four companies filed requests for exemption from the rental requirement in the Act with BLM and that BLM procedures "were followed to the letter, including the filing of statements of Change of Ownership, Quit Claim Deeds, and payment of the appropriate fees" to BLM. Appellant alleges that each of the four "claimant owners provided Companies West Group, Inc., with an appropriate check and filing to file the Notice of Exemption as required under [the Act]."

Counsel for BLM responds that BLM had no record of any such transfers of the claims from CWG during the 1995 or 1996 assessment years.

[1] The Act requires the holder of unpatented mining claims to pay, for the years 1994 through 1998, claim maintenance fees of \$100 per year. 30 U.S.C. § 28f(a) (1994). It allows the Department to waive the fees for a claimant who certifies that, on the date the payment was due, the claimant held "not more than 10 mining claims, mill sites or tunnel sites, or any combination thereof, on public lands" and performed the assessment work required by the Mining Law of 1872. 30 U.S.C. § 28f(d) (1994). Congress specified the legal consequence of failure to comply: "Failure to pay the claim maintenance fee \* \* \* shall conclusively constitute a forfeiture of

<u>1/ Asserted transferee</u>	<u>Claim names</u>
Golden Rainbow Resources	Deco Nos. 101 through 110
Prospect Mining Company	Deco Nos. 111 through 120
River of Life Foundation	Deco Nos. 121 through 130
Sigma Corporation	Deco Nos. 131 through 138

the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." 30 U.S.C. § 281 (1994).

Departmental regulations implementing the Act provide that payment of this fee may be waived for qualifying small miners. 43 C.F.R. § 3833.1-5(d). The fee waiver is not available to holders of more than 10 claims. If a maintenance fee for an unpatented mining claim is not paid, and if a certificate of exemption from payment is not timely filed by an owner of 10 or fewer claims, the claim is forfeited. 43 C.F.R. § 3833.4(a)(2).

[2] The Board applies a presumption of regularity that BLM officials have properly discharged their duties and have not lost or misplaced legally significant documents filed with them. Silver King Mining Co., 122 IBLA 357, 359 (1992), and cases cited. This presumption can be rebutted by probative evidence of receipt. Appellant has not provided evidence to show that the claims were transferred and that pertinent documentation was forwarded to BLM or that BLM received any small miner waiver certifications from any of the alleged transferee companies. Such evidence could include return receipt cards or copies of documents date stamped by BLM.

In this case, the SOR lists the names of four transferee companies, but does not identify the companies or the transactions further. The SOR does not provide addresses or any specific details of the supposed transactions, such as whether any transfers occurred by August 31, 1996, the due date for either fees or certificates of exemption from qualifying owners for the 1997 assessment year. In the absence of receipt of evidence that the claims were transferred by that date to owners independent of CWG, BLM properly attributed the 38 claims to CWG, which has since continued to proceed in a proprietary manner toward these claims on appeal.

We must note that Appellant Cole, as President and representative of CWG, purports also to represent the four claimed transferees on appeal; no other representative is identified or implied. If the listed four companies are in fact independent of CWG, then it does not appear that Cole would be able to represent them on appeal, under 43 C.F.R. § 1.3 and 43 C.F.R. § 4.3.

The BLM declared these claims abandoned and void. However, under 43 C.F.R. § 3833.4(a)(2), the failure to pay the maintenance fee or file the waiver certification within the time prescribed does not constitute an abandonment of the claims; instead, such a failure "shall be deemed conclusively to constitute a forfeiture" of the claims. The BLM Decision is modified accordingly.

Appellant requested a stay. In view of the Decision reached in this case, the request is denied as moot.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision of the Arizona State Office is affirmed as modified.

---

James P. Terry  
Administrative Judge

I concur:

---

Bruce R. Harris  
Deputy Chief Administrative Judge